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असाधारण

EXTRAORDINARY

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PART II—Section 2

प्राधिकार से प्रकाशित

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इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके।

Separate paging is given to this Part in order that it may be filed as a separate compilation

LOK SABHA

The following Bill was introduced in Lok Sabha on the 19th December, 1977:—

BILL No. 149 OF 1977

A Bill to provide for certain amendments to the Customs Act, 1962, the Central Excises and Salt Act, 1944 and the Central Boards of Revenue Act, 1963

BE it enacted by Parliament in the Twenty-eighth Year of the Republic of India as follows:—

CHAPTER I

PRELIMINARY

1. (1) This Act may be called the Customs, Central Excises and Salt and Central Boards of Revenue (Amendment) Act, 1977.

Short title and commencement

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint:

Provided that different dates may be appointed for different provisions of this Act and any reference in any such provision to the commencement of this Act shall be construed as a reference to the coming into force of that provision.

CHAPTER II

AMENDMENTS TO THE CUSTOMS ACT, 1962

52 of 1962.

2. In section 2 of the Customs Act, 1962 (hereafter in this Chapter referred to as the Customs Act), in clause (28), for the words "waters extending into the sea to a distance of twelve nautical miles measured from the appropriate base line on the coast of India", the words and figures "waters extending into the sea up to the limit of contiguous zone of India

Amendment of section 2.

under section 5 of the Territorial Waters, Continental Shelf, Exclusive Economic Zone and other Maritime Zones Act, 1976" shall be substituted.

80 of 1976.

Amend-
ment of
section 14.

3. In section 14 of the Customs Act,—

(a) in sub-section (1), in clause (a), for the proviso, the following proviso shall be substituted, namely:—

"Provided that such price shall be calculated with reference to the rate of exchange as in force on the date on which a bill of entry is presented under section 46, or a shipping bill or bill of export, as the case may be, is presented under section 50;"

(b) after sub-section (2), the following sub-section shall be inserted, namely:—

'(3) For the purposes of this section—

(a) "rate of exchange" means the rate of exchange—

(i) determined by the Central Government, or

(ii) ascertained in such manner as the Central Government may direct,

for the conversion of Indian currency into foreign currency or foreign currency into Indian currency;

(b) "foreign currency" and "Indian currency" have the meanings respectively assigned to them in the Foreign Exchange Regulation Act, 1973.'

46 of 1973.

Amend-
ment of
section 15.

4 In section 15 of the Customs Act—

(a) in sub-section (1), the words " , rate of exchange" shall be omitted;

(b) sub-section (3) shall be omitted

Amend-
ment of
section 27.

5. In section 27 of the Customs Act, for sub-section (1), the following sub-section shall be substituted, namely:—

"(1) Any person claiming refund of any duty paid by him in pursuance of an order of assessment made by an officer of customs lower in rank than an Assistant Collector of Customs may make an application for refund of such duty to the Assistant Collector of Customs—

(a) in the case of any import made by any individual for his personal use or by Government or by any educational, research or charitable institution or hospital, before the expiry of one year:

(b) in any other case, before the expiry of six months, from the date of payment of duty:

Provided that the limitation of one year or six months, as the case may be, shall not apply where any duty has been paid under protest.

Explanation.—Where any duty is paid provisionally under section 18, the period of one year or six months, as the case may be, shall be computed from the date of adjustment of duty after the final assessment thereof."

6. In section 28 of the Customs Act, in sub-section (1),—

Amend-
ment of
section 28.

(a) for the opening paragraph, the following shall be substituted, namely:—

“When any duty has not been levied or has been short-levied or erroneously refunded, the proper officer may,—

(a) in the case of any import made by any individual for his personal use or by Government or by any educational, research or charitable institution or hospital, within one year;

(b) in any other case, within six months,

from the relevant date, serve notice on the person chargeable with the duty which has not been levied or which has been so short-levied or to whom the refund has erroneously been made, requiring him to show cause why he should not pay the amount specified in the notice:”;

(b) in the proviso, for the words ‘ “six months” ’, the words ‘ “one year” and “six months” ’ shall be substituted.

7. After section 28 of the Customs Act, the following section shall be inserted, namely:—

Insertion
of new
section
28A.

“28A. Notwithstanding anything contained in this Act, if the Central Government is satisfied—

(a) that a practice was, or is, generally prevalent regarding levy of duty (including non-levy thereof) on any goods imported into, or exported from, India; and

(b) that such goods were, or are, liable—

(i) to duty, in cases where according to the said practice the duty was not, or is not being, levied, or

(ii) to a higher amount of duty than what was, or is being, levied, according to the said practice,

Power
not to
recover
duties not
levied or
short-
levied as
a result
of general
practice.

then, the Central Government may, by notification in the Official Gazette, direct that the whole of the duty payable on such goods, or, as the case may be, the duty in excess of that payable on such goods, but for the said practice, shall not be required to be paid in respect of the goods on which the duty was not, or is not being, levied, or was, or is being, short-levied, in accordance with the said practice.”.

8. In section 46 of the Customs Act, in sub-section (3),—

Amend-
ment of
section 46.

(a) in the proviso, for the words “such manifest or report”, the words “such report” shall be substituted;

(b) after the proviso as so amended, the following further proviso shall be inserted, namely:—

“Provided further that a bill of entry may be presented even before the delivery of such manifest if the vessel by which the goods have been shipped for importation into India is expected to arrive within a week from the date of such presentation.”.

Amend-
ment of
section 61.

9. In section 61 of the Customs Act,—

(a) for the opening paragraph, the following shall be substituted, namely:—

“Any warehoused goods may be left in the warehouse in which they are deposited or in any warehouse to which they may be removed,—

(a) in the case of non-consumable stores, till the expiry of three years; and

(b) in the case of any other goods, till the expiry of one year,

after the date on which the proper officer made an order under section 60 permitting the deposit of the goods in a warehouse.”;

(b) in the first proviso, for the words “three years”, in both places where they occur, the words “three years or one year, as the case may be,” shall be substituted.

Amend-
ment of
section
75.

10. In section 75 of the Customs Act—

(a) after sub-section (1), the following sub-section shall be inserted, namely:—

“(1A) Where it appears to the Central Government that the quantity of a particular material imported into India is more than the total quantity of like material that has been used in the goods manufactured in India and exported outside India, then, the Central Government may, by notification in the Official Gazette, declare that so much of the material as is contained in the goods exported shall, for the purpose of sub-section (1), be deemed to be imported material.”;

(b) in sub-section (2), in clause (a), for the words “goods of that class or description”, the words “export goods of that class or description” shall be substituted.

Amend-
ment of
section
113.

11. In section 113 of the Customs Act, in clause (i), after the words “dutiable or prohibited goods”, the words “or goods entered for exportation under claim for drawback” shall be inserted.

Amend-
ment of
section
122.

12. In section 122 of the Customs Act, for clauses (b) and (c), the following clauses shall be substituted, namely:—

“(b) where the value of the goods liable to confiscation does not exceed twenty-five thousand rupees, by an Assistant Collector of Customs;

(c) where the value of the goods liable to confiscation does not exceed two thousand five hundred rupees, by a gazetted officer of customs lower in rank than an Assistant Collector of Customs.”.

Amend-
ment of
section
128.

13. In section 128 of the Customs Act, in sub-section (1), in the opening paragraph, after the words “any decision or order passed under this Act”, the brackets, words and figures “(not being an order passed under section 130)” shall be inserted.

Substitu-
tion of
new sec-
tion for
section
130.

14. For section 130 of the Customs Act, the following section shall be substituted, namely:—

"130. (1) The Board may, of its own motion or otherwise, call for and examine the record of any proceeding in which a Collector of Customs has passed any decision or order under this Act for the purpose of satisfying itself as to the correctness; legality or propriety of such decision or order and may pass such order thereon as it thinks fit.

Powers of revision of Board.

(2) The Collector of Customs may of his own motion or otherwise call for and examine the record of any proceeding in which an officer of customs subordinate to him has passed any decision or order under this Act (not being an order passed in appeal under section 128) for the purpose of satisfying himself as to the correctness, legality or propriety of such decision or order and may pass such order thereon as he thinks fit.

(3) (a) No order enhancing any penalty or fine in lieu of confiscation or confiscating goods of greater value shall be passed under this section unless the person affected by the proposed order has been given a reasonable opportunity of showing cause against it.

(b) Where the Board or, as the case may be, the Collector of Customs is of opinion that any duty of customs has not been levied or has been short-levied, no order levying or enhancing the duty shall be made under this section unless the person affected by the proposed order is given notice to show cause against it within the time limit specified in section 28.

(4) No proceeding shall be initiated under this section in respect of any decision or order after the expiry of a period of one year from the date of such decision or order:

Provided that where in respect of any decision or order passed by an officer of customs before the commencement of the Customs, Central Excises and Salt and Central Boards of Revenue (Amendment) Act, 1977, the period of one year for initiating revision proceedings had expired at such commencement, then, revision proceedings may be initiated within a period of six months from such commencement."

15. In section 131 of the Customs Act, after sub-section (2), the following sub-section shall be inserted, namely:—

Amendment of section 131

"(2A) An application under sub-section (1) shall be accompanied by a fee of one hundred and twenty-five rupees."

16. In section 135 of the Customs Act, for the words "six months", wherever they occur, the words "one year" shall be substituted.

Amendment of section 135

17. After section 143 of the Customs Act, the following section shall be inserted, namely:—

Insertion of new section 143A. Duty deferment.

"143A. (1) When any material is imported under an import licence belonging to the category of Advance Licence granted under any order made under the Imports and Exports (Control) Act, 1947, subject to an obligation to export the goods as are specified in the said Licence, the Assistant Collector of Customs may, notwithstanding anything contained in this Act, permit clearance of such material without payment of duty leviable thereon.

(2) The permission for clearance without payment of duty under sub-section (1) shall be subject to the following conditions, that is to say—

(a) the duty payable on the material imported shall be adjusted against the drawback of duty payable under this Act or under any other law for the time being in force on the export of goods specified in the said Advance Licence; and

(b) where the duty is not so adjusted either for the reason that the goods are not exported as required by the said Advance Licence or for any other sufficient reason, the importer shall, notwithstanding anything contained in section 28, be liable to pay the amount of duty not so adjusted together with simple interest at the rate of twelve per cent per annum from the date the said permission for clearance is given to the date of payment.

(3) While permitting clearance under sub-section (1), the Assistant Collector of Customs may require the importer to execute a bond with such surety or security as he thinks fit for complying with the conditions specified in sub-section (2).".

Amend-
ment of
section
159.

18. In section 159 of the Customs Act, for the words "in two successive sessions, and if, before the expiry of the session in which it is so laid or the session immediately following", the words "in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid" shall be substituted.

CHAPTER III

AMENDMENTS TO THE CENTRAL EXCISES AND SALT ACT, 1944

Amend-
ment of
section 2.

19. In section 2 of the Central Excises and Salt Act, 1944 (hereafter in this Chapter referred to as the Central Excises and Salt Act), for clause (f), the following clause shall be substituted, namely:—

1 of 1944.

'(f) "manufacture" shall include—

(i) any manufacturing process to make a product marketable to the consumers or users;

(ii) any process carried out on the excisable goods—

(a) with the aid of power or machine; or

(b) without the aid of power or machine where specifically so provided in the First Schedule,

which, in either case, adds to their value but does not include any process carried out in the course of manufacture of any other excisable goods;

(iii) applying, either on the excisable goods or on their packing or both, trade mark as defined in the Trade and Merchandise Marks Act, 1958;

43 of 1958.

(iv) packing of the excisable goods for their storage in the retailer's or industrial consumer's premises, but does not include—

(a) packing done solely for the purpose of transporting the said goods; or

(b) packing done by the retailer;

(v) any other process incidental or ancillary to the completion of a manufactured product,

and the word "manufacturer" shall be construed accordingly and shall include not only a person who employs hired labour in the

production or manufacture of excisable goods, but also any person who engages in their production or manufacture on his own account;'

20. In section 3 of the Central Excises and Salt Act, for sub-section (3), the following sub-section shall be substituted, namely:—

Amend-
ment of
section 3.

“(3) Different tariff values may be fixed—

(a) for different classes or descriptions of the same excisable goods; or

(b) for excisable goods of the same class or description—

(i) produced or manufactured by different classes of producers or manufacturers; or

(ii) sold to different classes of buyers:

Provided that in fixing different tariff values in respect of excisable goods falling under sub-clause (i) or sub-clause (ii), regard shall be had to the sale prices charged by the different classes of producers or manufacturers or, as the case may be, the normal practice of the wholesale trade in such goods”.

21. After section 3 of the Central Excises and Salt Act, the following section shall be inserted, namely:—

Insertion
of new
section
3A

“3A. Where any excisable goods, after payment of duty of excise, are subjected to further manufacture—

Adjust-
ment of
duty

(a) by any of the processes referred to in sub-clauses (i), (ii) and (v) of clause (f) of section 2; or

(b) by applying any trade mark referred to in sub-clause (iii) of the said clause (f), or

(c) by the packing referred to in sub-clause (v) of the said clause (f),

and such goods continue to fall under the same sub-item of a particular Item in the First Schedule, or if there is no sub-item, under the same Item in the said Schedule, the duty of excise already paid on such goods shall be adjusted against the duty of excise leviable thereon after such further manufacture”

22. In section 4 of the Central Excises and Salt Act—

Amend-
ment of
section 4.

(a) for sub-section (2), the following sub-section shall be substituted, namely:—

“(2) Where the value of any excisable goods is determined with reference to the price which includes the cost of transportation from the place of removal to the place of delivery, whether on average basis or otherwise, such cost of transportation shall be excluded from such price.”;

(b) in sub-section (4),—

(i) for clause (c) including the *Explanation* thereto, the following shall be substituted, namely:—

“(c) “related person” means a person who is so associated with the assessee that such person and the assessee have such interest, directly or indirectly in the business of each other, as may affect the price charged for the excisable goods, and includes a holding company, a subsidiary company, an employee, a relative, or a distributor of the assessee and any sub-distributor of such distributor.

Explanation I.—In this clause “holding company” and “subsidiary company” have the same meanings as in the Companies Act, 1956.

1 of 1956.

Explanation II.—In this clause, “relative” has the same meaning as in the Companies Act, 1956 and includes,—

1 of 1956.

(i) in relation to a partnership firm, a relative of every partner of that firm; and

(ii) in relation to a company, a relative of the chairman or a relative of a director such director being a person controlling or managing the business of the company.

Explanation III—Where by agreement or otherwise—

(i) any excisable goods are generally sold only to or through a particular dealer in the whole of India or in more than one State or in the whole of a State or in a region comprising several districts of one or more States or in a metropolitan city having a population of more than one million as ascertained at the last preceding census of which the relevant figures have been published; or

(ii) the entire production of an assessee of any excisable goods is generally sold in an area or a city smaller than the area covered by the region or the metropolitan city referred to in clause (i) and such sales are generally to or through one particular dealer only,

such dealer shall be deemed to be a distributor or, as the case may be, sub-distributor;”;

(ii) in clause (d)—

(A) for the portion commencing with the words “value” in relation to’ and ending with the words “wrapped, contained or wound”, the following shall be substituted, namely:—

“value” in relation to any excisable goods.—

(i) where the goods are delivered at the time of removal in a packed condition, includes the cost of packing required for their storage in the retailer’s or industrial consumer’s premises but does not include—

(A) the cost of packing done solely for the purpose of transporting such goods;

(B) the cost of packing done by the retailer;
and

(C) the cost of packing which is of a durable nature and is returnable to the assessee or to the buyer, whosoever supplied it.

Explanation.—In this sub-clause, “packing” includes the wrapper, container, bobbin, pirn, spool, reel or warp beam or any other thing in which or on which the excisable goods are wrapped, contained or wound;

(B) after sub-clause (ii), the following *Explanation* shall be inserted, namely:—

Explanation.—For the removal of doubts it is hereby declared that “value” includes—

(i) the expenses incurred by or on behalf of the assessee for promoting the sale of excisable goods;

(ii) the expenses incurred by the assessee for the sale of excisable goods in the course of the wholesale trade either from the factory or from any place outside the factory:

Provided that where the sale is from any place outside the factory, the cost of transportation of the goods from the factory to such place shall be deducted;

(iii) the expenses incurred by the assessee for discharging the obligation for rectifying manufacturing defects for the period for which such obligation is normally undertaken by or on behalf of the manufacturers of such goods, or any amount representing the discount or reduction made in the price of such excisable goods on account of transfer of the obligation aforesaid to any other person;

(iv) the profit made by the assessee on the sale of the excisable goods;

23. After section 4 of the Central Excises and Salt Act, the following section shall be inserted, namely:—

Insertion
of new
section 5

“5 (1) The Central Government may, by rules made under this section, provide for remission of duty of excise leviable on any excisable goods which due to any natural cause are found to be deficient in quantity.

(2) Any rules made under sub-section (1) may, having regard to the nature of the excisable goods or of processing or of curing thereof, the period of their storage or transit and other relevant considerations, fix the limit or limits of percentage beyond which no such remission shall be allowed:

Remis-
sion of
duty on
goods
found
deficient
in quan-
tity.

Provided that different limit or limits of percentage may be fixed for different varieties of the same excisable goods or for different areas or for different seasons”.

Insertion
of new
sections
11A, 11B
and 11C.

24. After section 11 of the Central Excises and Salt Act, the following sections shall be inserted, namely:—

Recovery
of duties
not levied
or not
paid or
short-
levied or
short-
paid
or errone-
ously
refunded.

‘11A. (1) When any duty of excise has not been levied or paid or has been short-levied or short-paid or erroneously refunded, a Central Excise Officer may, within six months from the relevant date, serve notice on the person chargeable with the duty which has not been levied or paid or which has been short-levied or short-paid or to whom the refund has erroneously been made, requiring him to show cause why he should not pay the amount specified in the notice:

Provided that where any duty of excise has not been levied or paid or has been short-levied or short-paid or erroneously refunded by reason of fraud, collusion or any wilful misstatement or suppression of facts, or contravention of any of the provisions of this Act or of the rules made thereunder with intent to evade payment of duty, by such person or his agent, the provisions of this sub-section shall have effect, as if for the words “six months”, the words “five years” were substituted.

Explanation.—Where the service of the notice is stayed by an order of a court, the period of such stay shall be excluded in computing the aforesaid period of six months or five years, as the case may be.

(2) The Assistant Collector of Central Excise shall, after considering the representation, if any, made by the person on whom notice is served under sub-section (1), determine the amount of duty of excise due from such person (not being in excess of the amount specified in the notice) and thereupon such person shall pay the amount so determined.

(3) For the purposes of this section—

(i) “refund” includes rebate of duty of excise on excisable goods exported out of India or on excisable materials used in the manufacture of goods which are exported out of India;

(ii) “relevant date” means,—

(a) in the case of excisable goods on which duty of excise has not been levied or paid or has been short-levied or short-paid, the date on which the duty was required to be paid under this Act or the rules made thereunder,

(b) in a case where duty of excise is provisionally assessed under this Act or the rules made thereunder, the date of adjustment of duty after the final assessment thereof;

(c) in the case of excisable goods on which duty of excise has been erroneously refunded, the date of such refund.

Claim
for refund
of duty.

11B. (1) Any person claiming refund of any duty of excise may make an application for refund of such duty to the Assistant Collector of Central Excise before the expiry of six months from the date of payment of duty:

Provided that the limitation of six months shall not apply where any duty has been paid under protest.

Explanation.—Where any duty of excise is paid provisionally under this Act or the rules made thereunder, the period of six months shall be computed from the date of adjustment of duty after the final assessment thereof.

(2) If on receipt of any such application, the Assistant Collector of Central Excise is satisfied that the whole or any part of the duty of excise paid by the applicant should be refunded to him, he may make an order accordingly.

(3) Where as a result of any order passed in appeal or revision under this Act refund of any duty of excise becomes due to any person, the Assistant Collector of Central Excise may refund the amount to such person without his having to make any claim in that behalf.

(4) Save as otherwise provided by or under this Act, no claim for refund of any duty of excise shall be entertained.

(5) Notwithstanding anything contained in any other law, the provisions of this section shall also apply to a claim for refund of any amount collected as duty of excise made on the ground that the goods in respect of which such amount was collected were not excisable or were entitled to exemption from duty and no court shall have any jurisdiction in respect of such claim.

Explanation.—For the purposes of this section, “refund” includes rebate of duty of excise on excisable goods exported out of India or on excisable materials used in the manufacture of goods which are exported out of India.

11C. Notwithstanding anything contained in this Act, if the Central Government is satisfied—

(a) that a practice was, or is, generally prevalent regarding levy of duty of excise (including non-levy thereof) on any excisable goods; and

(b) that such goods were, or are, liable—

(i) to duty of excise, in cases where according to the said practice the duty was not, or is not being, levied, or

(ii) to a higher amount of duty of excise than what was, or is being, levied according to the said practice,

then, the Central Government may, by notification in the Official Gazette, direct that the whole of the duty of excise payable on such goods, or, as the case may be, the duty of excise in excess of that payable on such goods, but for the said practice, shall not be required to be paid in respect of the goods on which the duty of excise was not, or is not being, levied, or was, or is being, short-levied, in accordance with the said practice.

25. In section 35 of the Central Excises and Salt Act, in sub-section (1), after the words “the rules made thereunder”, the brackets, words, figures and letter “(not being an order passed under section 35A)” shall be inserted.

Power not to recover duty of excise not levied or short-levied as a result of general practice

Amendment of section 35.

Substitution of new section for section 85A.

Revision by Board or Collector.

26. For section 35A of the Central Excises and Salt Act, the following section shall be substituted, namely:—

"85A. (1) The Central Board of Excise and Customs constituted under the Central Boards of Revenue Act, 1963, (hereinafter referred to as the Board), may, of its own motion or otherwise, call for and examine the record of any proceeding in which any decision or order has been passed under this Act or the rules made thereunder by a Collector of Central Excise (not being a decision or order passed on appeal under section 35) for the purpose of satisfying itself as to the correctness, legality or propriety of such decision or order and may pass such order thereon as it thinks fit.

54 of 1963.

(2) The Collector of Central Excise may, of his own motion or otherwise, call for and examine the record of any proceeding in which any decision or order has been passed under this Act or the rules made thereunder by a Central Excise Officer subordinate to him (not being a decision or order passed on appeal under section 35) for the purpose of satisfying himself as to the correctness, legality or propriety of such decision or order and may pass such order thereon as he thinks fit.

(3) (a) No decision or order under this section shall be varied so as to prejudicially affect any person unless such person is given a reasonable opportunity of making a representation and, if he so desires, of being heard in his defence.

(b) Where the Board or, as the case may be, the Collector of Central Excise is of opinion that any duty of excise has not been levied or has been short-levied or erroneously refunded, no order levying or enhancing the duty, or no order requiring payment of the duty so refunded, shall be made under this section unless the person affected by the proposed order is given notice to show cause against it within the time limit specified in section 11A".

(4) No proceedings shall be commenced under this section in respect of any decision or order [whether such decision or order has been passed before or after the commencement of the Customs, Central Excises and Salt and Central Boards of Revenue (Amendment) Act, 1977] after the expiration of a period of one year from the date of such decision or order.

Amendment of section 36.

27. In section 36 of the Central Excises and Salt Act,—

(a) after sub-section (1), the following sub-section shall be inserted, namely:—

"(1A) Every application under sub-section (1) shall be accompanied by a fee of rupees one hundred and twenty-five.";

(b) in sub-section (2), after the second proviso, the following further proviso shall be inserted, namely:—

"Provided also that where the Central Government is of opinion that any duty of excise has not been levied or has been

short-levied or erroneously refunded, no order levying or enhancing the duty, or no order requiring payment of the duty so refunded, shall be made under this section unless the person affected by the proposed order is given notice to show cause against it within the time limit specified in section 11A."

28. In section 37 of the Central Excises and Salt Act, in sub-section (2), after clause (ib), the following clause shall be inserted, namely:—

Amend-
ment of
section
37

"(w) provide for the remission of duty of excise leviable on any excisable goods, which due to any natural cause are found to be deficient in quantity, the limit or limits of percentage beyond which no such remission shall be allowed and the different limit or limits of percentage for different varieties of the same excisable goods or for different areas or for different seasons;"

29. After section 37 of the Central Excises and Salt Act, the following section shall be inserted, namely:—

Insertion
of new
section
37A.

37A. The Central Government may, by notification in the Official Gazette, direct that subject to such conditions, if any, as may be specified in the notification—

Delega-
tion of
powers.

(a) any power exercisable by the Board under this Act may be exercisable also by a Collector of Central Excise empowered in this behalf by the Central Government;

(b) any power exercisable by a Collector of Central Excise under this Act may be exercisable also by a Deputy Collector of Central Excise or an Assistant Collector of Central Excise empowered in this behalf by the Central Government;

(c) any power exercisable by a Deputy Collector of Central Excise under this Act may be exercisable also by an Assistant Collector of Central Excise empowered in this behalf by the Central Government; and

(d) any power exercisable by an Assistant Collector of Central Excise under this Act may be exercisable also by a gazetted officer of Central Excise empowered in this behalf by the Board."

CHAPTER IV

AMENDMENT TO THE CENTRAL BOARDS OF REVENUE ACT, 1963

30. In section 3 of the Central Boards of Revenue Act, 1963, in sub-section (2) for the words "not exceeding five", the words "not exceeding seven" shall be substituted.

Amend-
ment of
Act 54 of
1963.

STATEMENT OF OBJECTS AND REASONS

The Bill seeks to carry out certain amendments in the Customs Act, 1962 and the Central Excises and Salt Act, 1944. Essentially the amendments are intended to remove certain practical difficulties experienced in the operation of Customs and Central Excise laws, and doubts regarding the interpretation of certain important provisions therein, to provide facilities to exporters and to increase the minimum punishment for smuggling. Some of the amendments to the Customs Act and the Central Excises and Salt Act are similar in nature.

The Bill also seeks to amend the Central Boards of Revenue Act, 1963, with a view to raise the maximum strength of the members of each of the two Boards (the Central Board of Direct Taxes and the Central Board of Excise and Customs) as it has become necessary in view of the phenomenal increase in the responsibilities of the two Boards.

The notes on clauses appended to the Bill explain in detail the various provisions thereof.

NEW DELHI;

SATISH AGARWAL.

The 3rd December, 1977.

PRESIDENT'S RECOMMENDATION UNDER ARTICLES 117 AND 274
OF THE CONSTITUTION OF INDIA

[Copy of letter No. 492/11/77-Cus. VI, dated the 13th December, 1977 from Shri Satish Agarwal, Minister of State in the Ministry of Finance to the Secretary, Lok Sabha.]

The President having been informed of the subject matter of the Customs, Central Excises and Salt and Central Boards of Revenue (Amendment) Bill, 1977 has recommended, under clause (1) and clause (3) of article 117 and clause (1) of article 274 of the Constitution, the introduction in, and consideration by, Lok Sabha of the said Bill.

Notes on Clauses

Clause 2.—This clause seeks to amend clause (28) of section 2 of the Customs Act, 1962 with a view to make the limits of the "Indian customs waters" as co-extensive with that of the contiguous zone of India under section 5 of the Territorial Waters, Continental Shelf, Exclusive Economic Zone and other Maritime Zones Act, 1976.

Clause 3.—This clause seeks to amend section 14 of the Customs Act, 1962 with a view to specify the rate of exchange which shall be applicable for calculating the price both for imported goods and the export goods. It also seeks to avoid the necessity under the existing law of recalculating the price with reference to the date of inward entry of the vessel

Clause 4.—This clause which seeks to amend section 15 of the Customs Act is consequential to the amendment proposed in clause 3 to section 14.

Clause 5.—This clause seeks to amend section 27 of the Customs Act to provide a longer time limit, i.e., one year for claiming refund of duty of customs in respect of non-commercial importations, i.e., importations made by any individual for his personal use or by Government or by any educational, research or charitable institution or hospital.

Clause 6.—This clause seeks to amend section 28 of the Customs Act to provide a longer time limit, i.e., one year for issuing notice in respect of non-commercial importations for payment of duties not-levied, short-levied or erroneously refunded. This change is complementary to the amendment proposed in clause 5.

Clause 7.—This clause seeks to insert a new section 28A in the Customs Act with a view to empower the Central Government not to recover duties not levied or the difference in duty short-levied as a result of the practice that generally prevailed during the period the non-levy or short-levy occurred. The rationale for this amendment is that if all concerned—the assessee, the customs authorities and the consumers—had acted upon a certain basis, that basis should not be disturbed retrospectively and no demand should be made in respect of assessments made on that basis merely because subsequently a different assessment is regarded as appropriate.

Clause 8.—This clause seeks to amend section 46 of the Customs Act. At present only in special circumstances the Collector may permit a bill of entry to be presented before the delivery of import manifest or report. A provision is now being made in this clause that the bill of entry may be presented even before the filing of import manifest if the vessel by which the goods have been shipped for importation into India is expected to arrive within a week.

Clause 9.—This clause seeks to amend section 61 of the Customs Act with a view to provide that except for non-consumable stores the period for which the goods can be retained in the warehouse would be one year instead of three years as at present.

Clause 10.—This clause seeks to insert a new sub-section (1A) in section 75 of the Customs Act with a view to introduce a provision for deeming materials as imported for grant of drawback of duty. If on an overall basis, it appears to the Central Government that the quantity of imports of a material is more than, the quantity of comparable material used in all the exported products, then the Central Government may, by notification in the Official Gazette, provide that such material when contained in any export goods shall, for the purpose of granting drawback, be deemed to be imported material. A consequential change is also being made in section 75(2) (a) by adding the word 'export' before the words 'goods of that class or description'.

Clause 11.—This clause seeks to amend clause (i) of section 113 of the Customs Act which provides for confiscation of goods in case of misdeclaration. It is now being provided that this clause will apply not only to dutiable and prohibited goods but also to goods entered for exportation under claim for drawback.

Clause 12.—This clause seeks to amend section 122 of the Customs Act with a view to enhance the power of adjudication of the Assistant Collectors and of gazetted officers lower in rank than the Assistant Collectors.

Clause 13.—This clause seeks to amend section 128 of the Customs Act with a view to make it clear that no appeal lies to the Board under section 128 of the Customs Act against any order passed by a Collector of Customs under section 130 of the Customs Act.

Clause 14.—This clause seeks to substitute section 130 of the Customs Act with a view to make two changes, namely, (i) to give the power to the Collectors to revise the decisions or orders passed by officers subordinate to them, and (ii) as in the case of the Central Excises and Salt Act, to provide a time limit for commencement of the proceedings and not for their finalisation.

Clause 15.—This clause seeks to insert a new sub-section (2A) in section 131 of the Customs Act to provide that an application for revision shall be accompanied by a fee of one hundred and twenty-five rupees.

Clause 16.—This clause seeks to amend section 135 of the Customs Act with a view to enhance the minimum punishment for certain kinds of offences from six months to one year

Clause 17.—This clause seeks to insert a new section 143A in the Customs Act with a view to provide for deferment of payment of duty on goods imported against Advance Licence granted under the Imports and Exports (Control) Act, 1947 and its adjustment against the drawback payable on the export of products specified in such Licence. The new provision also requires the importer to pay the unadjusted amount together with interest on that amount at the rate of 12 per cent per annum.

Clause 18.—This clause seeks to amend section 159 of the Customs Act relating to laying of rules before each House of Parliament to bring it in conformity with the recommendations of the Committee on Subordinate Legislation.

Clause 19.—This clause seeks to substitute clause (f) of section 2 of the Central Excises and Salt Act with a view to make it clear that the

word 'manufacture' shall include certain processes, applying of a registered trade mark as defined in the Trade and Merchandise Marks Act, 1958 on the excisable goods and the packing of excisable goods for their storage in the retailer's or industrial consumer's premises but shall not include the packing done solely for the purpose of transport of the said goods or packing done by the retailer. The processes comprise (i) any manufacturing process to make a product marketable to the consumers or users, (ii) any process carried out on the excisable goods which adds to their value and which is carried out with the aid of power or machine or if carried on without the aid of power or machine where specifically so provided in the First Schedule provided that such process is not carried out in the course of manufacture of any other goods, and (iii) any other process incidental or ancillary to the completion of a manufactured product.

Clause 20.—This clause seeks to substitute sub-section (3) of section 3 of the Central Excises and Salt Act with a view to set the legal position beyond doubt that different tariff values may be fixed not only for different classes or descriptions of the excisable goods but also for (i) excisable goods of the same class or description produced or manufactured by different classes of producers or manufacturers, or (ii) excisable goods of the same class or description sold to different classes of buyers. While fixing different tariff values, regard should be had to the sale prices charged by the different classes of producers or manufacturers or to the normal practice of the wholesale trade in such goods.

Clause 21.— This clause seeks to insert a new section 3A in the Central Excises and Salt Act which provides for adjustment of the duty already paid against the duty leviable after further manufacture as indicated in this clause.

Clause 22.—This clause seeks to amend section 4 of the Central Excises and Salt Act with a view to bring out more clearly the intention behind the valuation provision introduced in the Central Excise law in the year 1973 and to effect certain other changes. Sub-section (2) of section 4 is being substituted to provide that even in the cases of equalised freight the cost of transportation shall be excluded from the price. The definition of 'related person' is also being recast to provide that only a person who is so associated with the assessee that such person and the assessee have such business interest between each other as may affect the price charged will be a related person. Employee of the assessee is also being included in the category of 'related persons'. The definition of 'relative' is being extended to cover in the case of a partnership firm, a relative of a partner and in the case of a company, a relative of the chairman or of a director who is controlling or managing the business of the company. The expressions 'distributor' and 'sub-distributor' are also being defined. Clause (d) of sub-section (4) is also amended with a view to effect two changes. In the first place sub-clause (1) is being amended to make it conform to the new definition of 'manufacture'. Further, it is now being clarified that the cost of packing which is of a durable nature is not to be included not only when the packing supplied by the assessee is returnable to him but also where the packing supplied by the buyer is returnable to him. Lastly, the Explanation is being reworded to make it clear that it is an inclusive and not an exhaustive definition of 'packing'. An Explanation is being added to sub-clause (ii) of clause (d) to clarify that

the value includes the expenses incurred by or on behalf of the assessee for promoting the sale of excisable goods, the expenses incurred by the assessee for the sale of excisable goods in the course of wholesale trade, the expenses incurred by the assessee for discharging the warranty obligation for rectifying manufacturing defects for the period during which normally warranty is given and also any amount representing the discount or reduction given for the transfer of the warranty obligation to any other person. The value shall also include the profit made by the assessee on the sale of the excisable goods.

Clause 23.—This clause seeks to insert a new section 5 in the Central Excises and Salt Act with a view to empower the Central Government to make rules for remission of duty on any excisable goods liable to duty but which due to any natural cause are found to be deficient in quantity. Such rules may also fix the limit or limits of percentage beyond which no such remission shall be allowed and the different limit or limits of percentage for different varieties of the same excisable goods or for different areas or for different seasons.

Clause 24.—This clause seeks to insert new sections 11A, 11B and 11C in the Central Excises and Salt Act. Section 11A seeks to incorporate in the Act the existing provision contained in the Central Excise Rules relating to recovery of duties not levied or not paid or short-levied or short-paid or erroneously refunded. Similarly, new section 11B seeks to incorporate in the Act the time limit of six months provided in the Central Excise Rules for claiming refund of duty paid in excess. It also imposes a prohibition that no claim for refund, except as otherwise provided by or under the Central Excises and Salt Act, shall be entertained. It is being further provided that the provisions of this section shall also apply to a claim for refund of any amount collected as duty of excise though the goods in respect of which such amount was collected were in fact not liable to duty of excise or were exempt from such duty and no court shall have any jurisdiction in respect of such claim. New section 11C seeks to provide that if the Central Government is satisfied that there has been a uniform practice or near uniform practice prevailing all over India for assessment of any goods, the Government may direct that the duty in excess of that payable in accordance with such practice shall not be required to be paid for the period during which the Government considers that such practice was prevalent.

Clause 25.—This clause seeks to amend section 35 of the Central Excises and Salt Act with a view to provide that no appeal under this section shall lie to the Central Board of Excise and Customs against a decision or order passed in revision under section 35A by a Collector of Central Excise.

Clause 26.—This clause seeks to substitute section 35A of the Central Excises and Salt Act with a view to make two changes in this provision. In the first place, the Collector of Central Excise is being given the power to revise any decision or order passed under the Central Excises and Salt Act or the rules made thereunder by a Central Excise officer subordinate to him. Secondly, it is being provided that where the proposed order in revision relates to levy or enhancement of duty or requires payment of duty erroneously refunded, the notice to show cause should be given to the person affected within the time limit

specified in section 11A i.e the time limit for issuing notice for recovery of duties not levied or not paid, or short-levied or short-paid or erroneously refunded.

Clause 27.—This clause seeks to amend section 36 of the Central Excises and Salt Act, firstly to provide that every application for revision under sub-section (1) shall be accompanied by a fee of rupees one hundred and twenty-five and secondly that no order levying or enhancing the duty or no order requiring the payment of duty so refunded shall be made by the Central Government unless the person affected by the proposed order is given notice to show cause against it within the time limit specified in section 11A

Clause 28.—This clause seeks to amend section 37 of the Central Excises and Salt Act for making rules in respect of matters dealt with by new section 5, inserted by clause 23

Clause 29.—This clause seeks to insert a new section 37A in the Central Excises and Salt Act to provide for a general provision for delegation of powers as in section 152 of the Customs Act.

Clause 30.—This clause seeks to amend sub-section (2) of section 3 of the Central Boards of Revenue Act, 1963 with a view to provide that each of the two Boards, namely, the Central Board of Direct Taxes and the Central Board of Excise and Customs shall consist of such number of persons not exceeding seven as the Central Government may deem fit to appoint. The maximum strength, at present, is five.

FINANCIAL MEMORANDUM

Clause 30 of the Bill seeks to amend the Central Boards of Revenue Act, 1963. The effect of this amendment will be that the maximum number of members of each of the two Boards, namely, the Central Board of Excise and Customs and the Central Board of Direct Taxes could be up to seven instead of the present strength of five. The amendment proposed as such does not involve any expenditure, but as and when the number of members is increased, there will be additional expenditure. It is not possible to anticipate accurately the expenditure which would be involved in this regard because that would depend on the increase in the number of members. However, on the basis that the maximum number of members would be seven in each of the two Boards, the recurring annual expenditure is likely to be of the order of Rs. 2,64,000. The non-recurring expenditure will be of the order of Rs. 60,000.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 28 seeks to insert a new clause in sub-section (2) of section 37 of the Central Excises and Salt Act, 1944 which provides for the making of rules. Under the new clause, the Central Government is being empowered to make rules to provide for the remission of duty of excise leviable on any excisable goods which due to any natural cause are found to be deficient in quantity, for the limit or limits of percentage beyond which no such remission shall be allowed and for the different limit or limits of percentage for different varieties of the same excisable goods or for different areas or for different seasons.

The matters with respect to which rules may be made are matters of procedure and detail and it is not practicable to provide them in the Bill itself. The delegation of legislative power is, therefore, of a normal character.

AVTAR SINGH RIKHY,
Secretary.